

Shaun R. Thompson
Disciplinary Counsel
P.O. Box 1099
Helena, MT 59624-1099
Tele.: (406) 442-1648
Office of Disciplinary Counsel

FILED

JAN 28 2010

PR10-0038

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

BEFORE THE COMMISSION ON PRACTICE OF THE
SUPREME COURT OF THE STATE OF MONTANA

IN THE MATTER OF JAMES W. SPANGELO,)	Supreme Court Cause No.
An Attorney at Law,)	ODC File No. 08-223
Respondent.)	COMPLAINT

By request of a Review Panel of the Commission on Practice, the Office of Disciplinary Counsel for the State of Montana ("ODC") hereby charges James W. Spangelo with professional misconduct as follows:

General Allegations

1. James W. Spangelo, hereinafter referred to as Respondent, was admitted to the practice of law in the State of Montana in 1976, at which time he took the oath required for admission, wherein he agreed to abide by the Rules of Professional Conduct, the Disciplinary Rules adopted by the Supreme Court, and the highest standards of honesty, justice and morality, including but not limited to, those outlined in parts 3 and 4 of Chapter 61, Title 37, Montana Code Annotated.

2. The Montana Supreme Court has approved and adopted the Montana Rules of Professional Conduct (“MRPC”), governing the ethical conduct of attorneys licensed to practice in the State of Montana, which Rules were in effect at all times mentioned in this Complaint.

Count One

3. ODC realleges and incorporates paragraphs 1 through 2 of the General Allegations as if fully restated in this Count One.

4. Mabel Dehlbom (“Dehlbom”) died on March 10, 1999.

5. On or about April 25, 1999, Mary Rex, an Idaho resident and Dehlbom's former daughter-in-law, asked Respondent to handle the probate of the estate and have Rex appointed as personal representative. Respondent agreed to represent Rex.

6. On May 27, 1999, Respondent filed an Application for Informal Probate of Will an Appointment of Personal Representative. The case was captioned *In the Matter of the Estate of Mabel Dehlbom*, Hill County District Court, Cause No. DP-99-032. Rex was appointed personal representative.

7. Rex sent Respondent a letter dated February 23, 2001 terminating Respondent's services and requesting her file. Respondent did not respond to the letter or send Rex the file.

8. On or about June 11, 2001, Respondent was notified that Havre attorney Stephen R. Brown Jr. ("Brown") would be representing Rex. Respondent refused to sign a form withdrawing as counsel and substituting Brown on the grounds that he had not been paid for his services. Brown subsequently declined to represent Rex.

9. Respondent did not withdraw as counsel of record.

10. On May 10, 2004, Respondent filed a Report to Court in which he reported the case had remained opened to attempt to locate assets and that the estate had "one small mineral

1 estate.” Respondent also reported that “the illness of the Personal Representative has delayed the
2 closing of this case.”

3 11. On December 15, 2004, the Court issued an Order to Show Cause directing the
4 personal representative and her attorney to show cause why the estate had not been closed and
5 set a hearing for February 14, 2005. On Respondent’s motion, the hearing was vacated and the
6 time to close the estate was extended through May 13, 2005.

7 12. On May 18, 2005, the Court issued another Order to Show Cause directing the
8 personal representative and her attorney to show cause why the estate had not been closed and
9 set a hearing for June 21, 2005.

10 13. The Court held a show cause hearing on June 21, 2005. Respondent appeared and
11 submitted various pleadings including a Report to Court, a Motion to Appoint Attorney for
12 Estate as Personal Representative, an Affidavit in Support of Motion, a Motion to Close Estate,
13 an Affidavit in Support of Motion.

14 14. At the hearing and in his pleadings, Respondent represented that Rex had
15 disappeared and that he believed that she was deceased. The Court appointed Respondent
16 Personal Representative and, at Respondent’s request, transferred the mineral rights to
17 Respondent for his legal services and closed the estate.

18 15. In violation of Rule 1.16, MRPC, Respondent failed to withdraw as counsel of
19 record after he was discharged.

20 16. In violation of Rule 1.16, MRPC, Respondent, upon termination of representation,
21 failed to provide Rex her file as requested and/or failed to take steps to the extent reasonably
22 practical to protect Rex’s interests.
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18. The pleadings filed by Respondent with the Court after Rex terminated his representation in February 2001 were sent by Respondent to Rex. The Certificate of Service on the pleadings used an old address—not the address that Respondent was provided before and after termination of his representation.

20. Respondent did not advise the Court that Rex had discharged him in 2001.

22. Respondent did not notify the Court upon finding out that Rex was alive in October 2008.

Count Three

25. In violation of Rule 1.3, MRPC, Respondent, after mid-2000, did not act with reasonable diligence in representing Rex.

1 26. In violation of Rule 1.4, MRPC, Respondent did not promptly reply to Rex's
2 reasonable requests for information and /or failed to keep Rex reasonably informed about the
3 status of the matter.

4 **Count Four**

5 27. ODC realleges and incorporates paragraphs 1 through 2 of the General
6 Allegations and paragraphs 4 through 14 of Count One as if fully restated in this Count Four.

7 28. On November 28, 2005, Respondent, as personal representative, signed a Deed of
8 Conveyance transferring the mineral rights to himself.

9 29. Upon information and belief, Respondent, in violation of Rule 1.5, took a fee that
10 his client did not agree to.

11 WHEREFORE, the Office of Disciplinary Counsel prays:

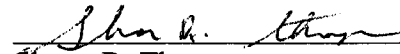
12 1. That a Citation be issued to the Respondent, to which shall be attached a copy of
13 the complaint, requiring Respondent, within twenty (20) days after service thereof, to file a
14 written answer to the complaint;
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16 2. That a formal hearing be had on the allegations of this complaint before an
17 Adjudicatory Panel of the Commission;

18 3. That the Adjudicatory Panel of the Commission make a report of its findings and
19 recommendations after a formal hearing to the Montana Supreme Court, and, in the event the
20 Adjudicatory Panel finds the facts warrant disciplinary action and recommends discipline, that
21 the Commission also recommend the nature and extent of appropriate disciplinary action, and,
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23 4. For such other and further relief as deemed necessary and proper.
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1 DATED this 27th day of January, 2010.

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4 Shaun R. Thompson
5 Disciplinary Counsel
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